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Joint written statement* submitted by the International Cooperation for Development and Solidarity (CIDSE), a non-governmental organization in general consultative status, Bischöfliches Hilfswerk Misereor e.V., Swiss Catholic Lenten Fund, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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UN Business and Human Rights Framework: Developing an intergovernmental process towards a binding instrument*

In its 2011 resolution, the UN Human Rights Council recognized the role of the UN Guiding Principles on business and human rights as a contribution to enhancing standards and practice, "without foreclosing any other long-term development, including further enhancement of standards."

The UN Protect, Respect and Remedy Framework and its Guiding Principles set out clearly that business impacts require a "smart mix" of policy responses that goes beyond voluntary standards and includes regulation. CIDSE and its member organizations believe that if the Framework and Principles are implemented effectively in this way, they could be a valuable tool for reducing the risk of human rights abuses. Therefore we are actively engaging in national discussions on Business and Human Rights Action Plans and working with our partners to monitor and evaluate the situation on the ground.

Yet implementation by States and companies has been very slow, and States' efforts so far have given little attention to legal measures. At its June 2014 session, the Council must take its responsibility to review the situation and consider remaining gaps requiring complementary, targeted further steps in order to strengthen the collective framework, especially in relation to access to judicial remedy.

There is urgency. A wide number of communities and individuals are suffering abuses and violations of a range of human rights now as a result of business activity. By some measures, the situation has even worsened since 2011, as for cases of social conflict, criminalization of protest related to business investments and killings of human rights defenders. Access to justice and remedy continues to be denied to communities in numerous countries, also highlighting the need for effective extraterritorial actions by States where multinational companies are based. The case for further international action is supported by the UN Office of the High Commissioner on Human Rights (OHCHR) study on domestic law remedies for corporate involvement in gross human rights abuses.

The OHCHR study follows on from former Special Representative John Ruggie's call upon States in 2011 and subsequently to address the weaknesses and inconsistencies in the legal protection of human rights related to gross human rights abuses. Recognising this and other gaps in the Guiding Principles, several initiatives are calling for an international treaty or instrument.[1] Civil society and Church voices across the globe are demanding more effective responses. The growing impatience in many countries has been marked by the Ecuador initiative for a binding instrument.

One year ago, one of the most devastating catastrophes in the textile sector happened with the collapse of the Rana Plaza building in Dhaka, Bangladesh. This disaster illustrates the shared obligations and responsibilities of multiple States, transnational and national enterprises. There is a clear need for instruments that match the reality of today's global corporate structures and business relationships, also to provide a level playing field for all businesses.

We recognise that the complex challenge of preventing corporate abuses of human rights will require a range of creative approaches, not one single solution. In France, parliamentarians have proposed to establish a duty of care for multinational corporations, to prevent damages to the environment, health and human rights within all their economic relationships.[2] An international instrument requiring national legislation enacting corporate legal liability for serious violations of human rights would serve both as an incentive for businesses to undertake proper human rights due diligence, and to repair harm done where they fail. This would build upon and strengthen the approach to human rights due diligence articulated in the UN Guiding Principles.

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[1] See Call for an international legally binding instrument on human rights, transnational corporations and other business enterprises, People's Forum on Human Rights and Business, Bangkok, November 2013.

[2] Proposition de loi n°1524, Devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, November 2013.

The September 2013 statement to the Human Rights Council in favor of a binding instrument, supported by 85 States, is an indication of the depth of support by a number of States and a favorable sign for implementation. A legally binding instrument addressing the shared responsibilities of multiple States and businesses in preventing and remedying situations of human rights abuses, such as the Rana Plaza disaster, could remove obstacles to individual States and businesses moving independently of others. With an effective monitoring and follow up mechanism, this could make a real difference on the ground. It is certainly worth developing in-depth thinking about the pros and cons of different regional and international instruments, without simply closing down the debate.

If we are to see wide-scale reductions in instances of human rights abuses as a result of business activities, it is important to make progress in parallel both on implementation of the Guiding Principles, and in discussions on a binding international instrument, building on efforts to date.

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* CAFOD, England and Wales; Entraide et Fraternite / Justice and Peace Commission Belgium; KOO / DKA Austria; Trocaire, Ireland; SCIAF, Scotland NGO(s) without consultative status, also share the views expressed in this statement.